

## **LGBT Politics in a Europeanized Germany: Unification as a Catalyst for Change**

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**Abstract:** The two and a half decades since unification have brought about significant paradigm changes in German social policies toward lesbian, gay, bisexual, and transgender (LGBT) citizens including, *inter alia*, the legalization of same-sex partnerships, an expansion of the rights granted to these same sex couples, and reforms allowing individuals to change their legal gender without divorcing or undergoing irrevocable surgeries. This article investigates developments that led the government of the Federal Republic, long dominated by socially-conservative Christian Democrats, to extend greater rights to sexual minorities in the years following unification. The explanation lies in LGBT activists' use of what van der Vleuten (2005) refers to as "pincer" tactics, working not only at the national but also at the European level to pressure reluctant domestic actors. Unification proved a critical juncture on both fronts, leading to the creation of a politically-influential, pan-German LGBT organization at the domestic level and to institutional changes conducive to LGBT activism at the European Union level. In the language of the introduction to this volume, unification had an *indirect* effect on LGBTI rights, leading to a *gradual* increase in rights for sexual minorities, driven by a combination of activism from the "*outside in*" and the "*inside out*." This article "brings in" the study of gender and sexuality to the literature on post-communist transformations.

**Note:** A version of this paper is scheduled to appear in a forthcoming special issue of *German Politics*, commemorating the 25<sup>th</sup> anniversary of German unification.

When the Berlin Wall fell in 1989, the largest West German lesbian organization was less than a decade old, gay male sex among youth under 18 years old was still a criminal offense, gay activists there were divided among themselves, and transgender people had not yet begun to organize. East German lesbian gay, and bisexual groups were subject to infiltration by the Stasi, and transgender citizens had not begun organizing in that part of the country either. Public policies designed to improve the rights of lesbian, gay, bisexual, and transgender (LGBT) individuals were hardly on anyone's political agenda. By 2015, however, the Federal Republic had come to legalize same-sex partnerships, accepted openly homosexual military officers, and banned discrimination on the basis of sexual orientation. It also built a monument for and promised reparations to gay victims of the Holocaust, started a federal foundation to support the rights of sexual minorities, and removed provisions requiring surgery and divorce prior to changing one's legal gender. Indeed, international observers classify contemporary Germany as a leader in lesbian gay, bisexual, and transgender rights (Ayoub 2013). Clearly, the years since unification have brought a sea change to the rights of sexual minorities in Germany.

These reforms are particularly surprising given that united Germany's governments have been headed primarily by socially-conservative Christian Democrats for all but eight of the last twenty-five years. This article focuses on developments in two key domains of interest to sexual minorities: the right to marry and the right to change one's legal sex. Commensurate with the themes outlined in the editors' introduction, these reforms can be attributed to a combination of internal and external forces. I argue that policy changes in these areas can indirectly be credited to two key developments at the time of unification: the first involves the formation of an influential pan-German LGBT interest group; the second stems from intensified European

Union integration (“deepening”) which saw greater supranational decision making in social policy. Drawing on Anna van der Vleuten’s concept of “pincers and prestige” (2005), I maintain that domestic and European level pressures have “squeezed” reluctant German governments into improving LGBT rights in the decades since unification. Rather than occurring all at once, these changes have occurred in small steps and have resulted from tireless activism. The case study of LGBT rights in Germany since 1989 enriches the post-communist transformation literature by examining how the fall of the Berlin Wall, unification, and growing Europeanization have affected sexual minorities.

Below, I first provide a brief historical sketch of LGBT-related laws and organization in Germany as well as at the European level prior to unification. I then discuss unification as an indirect catalyst for change on both the domestic and the European fronts. The final section traces the policy developments that have taken root since then, demonstrating the extent to which LGBT activists have been able to combine internal domestic activism and external international pressure to prod German policy makers into gradually improving the legal status of sexual minorities.

### **I. Pre-Unification LGBT Rights and Activism**

The formation of nation states and modern legal systems across Europe brought with them restrictive policies toward homosexual acts. Over time, however, so-called “sodomy laws” began to disappear or were no longer strictly enforced; the decriminalization of sodomy served as an important precondition for the extension of other rights to lesbian and gay citizens. The earliest anti-sodomy law, the British “Buggery Act” of 1533, prohibited “unnatural” sexual acts, widely interpreted to mean male-male sexual contact or bestiality. Colonization spread this legal

model throughout the British Empire to countries such as the United States. The common law tradition made anti-sodomy precedents difficult to remove in these settings.

Across the English Channel, continental monarchies began to consolidate traditional canon and merchant laws into national-level, state-sponsored legal codes; prohibitions on same-sex sexual activity became legally enshrined in places including France and Prussia. Enlightenment thinking among French revolutionaries brought a rapid end this policy as they sought to exclude Catholic morality from the Penal Code of 1791. The Code Napoleon continued this tradition, leading even French colonies to adopt penal codes devoid of anti-sodomy provisions.<sup>1</sup> Almost a century after the French had done away with sodomy laws, prohibitions adopted under Prussian law were carried over and incorporated into the newly-united Germany's *Strafgesetzbuch* as Paragraph 175, outlawing male-male sexual contact.

Almost as soon as Paragraph 175 appeared, activists began to challenge it. Germany became home to the world's first overtly political LGBT group, the *Wissenschaftlich-humanitäres Komitee* (the Scientific-Humanitarian Committee), founded by Dr. Magnus Hirschfeld and feminist Helene Stöcker; Hirschfeld was an early sexual researcher who argued that homosexuality and transsexualism were natural human behaviors (Adam 1995). The *Komitee's* main political goals included the abolition of Paragraph 175 and, failing that, preventing its proposed expansion to include women. Between 1898 and the fall of the Weimar Republic, the group submitted multiple petitions to the Reichstag calling for the repeal of Paragraph 175. While they proved successful in limiting Paragraph 175 to men, they failed to achieve its removal from

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<sup>1</sup> This diffusion even extended to Bavaria whose laws prior to German unification in 1871 had not included a sodomy clause.

the penal code. While the *Komitee* ultimately gained the support of the Social Democrats (SPD) and Communists (KPD), these parties did not hold a legislative majority.

After the collapse of the Weimar Republic, the Nazis broadened the scope of Paragraph 175 to criminalize not only physical sexual acts but also the intent to engage in them. Moreover, punishments were increased to include up to ten years in prison. Almost 50,000 men (and some women) were jailed or sent to concentration camps, where untold numbers perished (Baumann 1968). Activists Hirschfeld and Stöcker fled the country and died in exile. Decimated as a result of National Socialist atrocities, the LGBT movement in Germany did not fully recover until after unification.

While the two German states emerging from the rubble of World War II differed in many respects, they both retained Paragraph 175 in their legal codes; West Germany continued to use the Nazi formulation while East German leaders reverted to the law's original wording.<sup>2</sup> In 1968 the GDR developed a completely new criminal code to replace the one it had inherited from past regimes; the old Paragraph 175 was replaced by a new Paragraph 151, which forbade male and female minors, but not adults, from engaging in same-sex relations.

A decade or so after the new penal code had been adopted, LGBT mobilization took off in western democracies. Gays and lesbians began to organize working groups (*Arbeitskreise Homosexualität*) in the German Democratic Republic (GDR) under the auspices of the Lutheran Church; theologian Eduard Stapel, a gay man, was quite instrumental in this process. As working groups proliferated throughout the country, they were harassed by the police and infiltrated by Stasi collaborators, who viewed them as potential threats to the regime (Sweet 1995).

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<sup>2</sup> For full texts of all the laws see here: [https://de.wikipedia.org/wiki/%C2%A7\\_175](https://de.wikipedia.org/wiki/%C2%A7_175)

Perhaps in an effort to weaken Church influence and assert greater government control over an emerging LGBT movement, the GDR held a series of public conferences on homosexuality in the late 1980s, calling for an end to prejudice and discrimination. In late 1988 the Volkskammer struck Paragraph 151 from the penal code altogether. State-controlled media began publishing articles about homosexuality; a film entitled *Coming Out* was produced shortly before the fall of the Wall. The Free German Youth and state-sponsored Youth Clubs formed sections for young gays and lesbians. Activists speculated that the SED found it easier to monitor potentially subversive sexual minorities in such settings than within Church circles (Sweet 1995). Thus by the time the Wall fell, organized gays and lesbians, albeit not transgender groups, in East Germany were relatively well-networked. However, given the repressive nature of the socialist regime they possessed little political influence.

The post-war situation in West Germany, where Christian Democratic (CDU/CSU) and Catholic Church influence remained strong, was less accepting. Between 1949 and the late 1960s, the Federal Republic prosecuted approximately 1,000 - 3,000 individuals per year under Paragraph 175 (Hoffschildt 2002). Indeed, some people who had been convicted of homosexuality under the Nazis were returned to former concentration camps to finish out their sentences.<sup>3</sup> Gays were not initially publicly acknowledged as victims of the Holocaust. In the 1950s activists filed several constitutional court cases, requesting that Paragraph 175 be deemed unconstitutional; however, judges ruled against the plaintiffs.<sup>4</sup> As societal attitudes began to

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<sup>3</sup> See for example: <http://www.spiegel.de/einestages/schwulenparagraf-175-zeitzeuge-klaus-born-musste-ins-gefaengnis-a-971970.html>

<sup>4</sup> BVerfG, Urteil vom 10. Mai 1957, Az. 1 BvR 550/52, BVerfGE 6, 389. These cases also failed in the European Court of Human Rights (Helfer and Voeten 2014).

change in the 1960s, the number of Paragraph 175 convictions declined. In 1969 prohibitions on homosexual activity between consenting adults were dropped from Paragraph 175, although rules against “qualified” cases of homosexuality involving male minors under 21, prostitutes, or work superiors who pressured subordinates were retained.

The legalization of same-sex activity between consenting adults and the rise of an American gay pride movement sparked the mobilization of new LGBT groups across the Federal Republic throughout the 1970s. No longer criminalized, gays and lesbians created a myriad of organizations featuring many fissures and viewpoints -- internal divisions that rendered the movement politically ineffective. The gay pride movement of the 1970s focused more on helping people come out of the closet than on political lobbying. Motivated by its liberal ideology and its traditional objections to state intervention in people’s private lives, the Free Democratic Party (FDP) was the sole party to take up the gay rights issue at that point. In 1973 the FDP helped to reduce the age of consent to 18; by 1980 the party came to favor a complete repeal of Paragraph 175.

The 1980s saw the emergence of nation-wide gay and lesbian associations in West Germany: founded in 1982, the *Lesbenring* remains the largest lesbian-only organization in Germany today. The *Bundesverband Homosexualität* (BVH) was formed in 1986. Because women were not mentioned in Paragraph 175, the *Lesbenring* did not initially engage in intensive political work. The BVH, by contrast, directly focused its energies on trying to repeal sodomy laws, just as Hirschfeld and Stoecker had done a century before. While BVH members agreed to push for legislative repeal, they remained divided over other goals the organization needed to pursue. Taking what today would be called a queer approach, some members believed the strength of

the LGBT movement lay in its embrace of alternative, unconventional lifestyles. Others, adopting a more traditional stance, favored the pursuit of legal arrangements for monogamous gay and lesbian couples.

The BVH gained the support of the newly-created Green party in its quest to remove Paragraph 175 from the Criminal Code. The first openly gay and lesbian members of the Bundestag, Herbert Rusche and Jutta Oesterle-Schwerin, both Greens, were elected in 1985 and 1987, respectively. The two largest parties expressed virtually no support for LGBT rights; transgender citizens had not yet begun to mobilize politically. In short, by the end of the 1980s, the Federal Republic still offered fewer freedoms to gay men than did East Germany; several hundred people were charged under Paragraph 175 each year throughout the final decade of Germany's division (Hoffschildt 2002). In early 1989 the Green parliamentary party group proposed draft legislation to abolish Paragraph 175 altogether, but it was defeated by the CDU/FDP coalition with votes from the SPD. At the time unification occurred, the West German LGBT movement was still divided.

In contrast to the divisions seen among western LGBT groups prior to unification, a strong European-level organization had already emerged, beginning in the late 1970s. The difficulty of obtaining legal precedents to repeal sodomy laws in common law countries had inspired English-speaking gay and lesbian activists to found a transnational organization in an attempt to use international courts to force change in their own countries. In 1978 activists from the U.K., Northern Ireland, Ireland, Australia, the United States, and elsewhere had formed an organization known today as the International Lesbian, Gay, Bisexual, Trans and Intersex



Association or ILGA (Ayoub and Paternotte 2014, ILGA 2013).<sup>5</sup> From its inception, the group framed limits on LGBT rights as human rights violations, filing lawsuits with the European Court of Human Rights (ECtHR). This court was selected because it was relatively accessible to activists wishing to file legal challenges; its approachability, in turn, drove the human-rights framing of the cases submitted (van der Vleuten 2014). The European Community was still viewed as primarily an economic entity at the time, offering a less promising venue for LGBT activists, something that would change following unification. ILGA-sponsored lawsuits contesting sodomy laws in Northern Ireland and the Republic of Ireland were successful in 1981 and 1988, respectively. During this era, ILGA also filed a number of unsuccessful cases regarding unequal ages of consent, bans on gays in the military, transgender-related questions and the denial of asylum or housing rights to same-sex partners (van der Vleuten, 2014, 122 – 124).

## **II. German Unification as a Catalyst for Change**

The year 1990 proved an eventful one that would have long-term ramifications for LGBT citizens in Germany and across Europe: it brought the birth of a united, pan-German advocacy organization for sexual minorities as well as EU institutional reforms that would expand the venues through which LGBT activists could push for social change. Before documenting these two key occurrences, I discuss why, theoretically, we might expect these developments to serve as catalysts for change.

As noted earlier, the decades following 1990 saw the extension of many civil rights to sexual minorities, undertaken by political parties evincing little prior commitment to LGBT rights. Anna van der Vleuten (2005) helps to explain why domestic governments may at times adopt

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<sup>5</sup> Some LGBT organizations from civil law countries were also involved.

policies with which their leaders disagree. This can occur, she argues, when governments are “squeezed between [the] pincers” of supranational pressure, on the one hand, and domestic activism, on the other. The former comes to pass when a given state’s prestige and, hence, its national interest is threatened. What constitutes “prestige” is state-specific. In the German case, according to van der Vleuten, it derives from “the protection of the fundamental rights of its citizens” 2005, (467). In other words, when international actors challenge Germany’s commitment to human rights protections, it becomes more likely to take some sort of action to defend its reputation (see also Kollman 2014), especially in view of its history. The action to be taken, she argues, depends, in turn, on domestic conditions. Where no strong domestic actors are present to push for policy change (as had been the case prior to unification), government responses are likely to be merely rhetorical. Where organized interest groups are able to exert pressure on the state, policy concessions transcending simple rhetoric are more likely to be squeezed out of even reluctant governing coalitions.

While van der Vleuten’s work focuses on gender equality legislation more broadly across the entire EU, research specifically focusing on the rights of sexual minorities in post-communist eastern and central Europe comes to similar conclusions. Phillip Ayoub finds that the closer contacts between domestic gay and lesbian activists in new EU member states and their external counterparts in older members and at the European level, the greater the expansion of LGBT rights in a given country (2016). Unification helped to create both prongs of the pincers needed to force improvements to LGBT rights across Germany as a whole.

*Unification’s Impact on the European Union*

On the supranational front, Helmut Kohl's government had already taken deliberate steps in the early 1990s to assuage European fears of a resurgent united Germany, binding the country more tightly to the (renamed) European Union under the 1992 Maastricht Treaty (Anderson, 1999, 45). To demonstrate its national commitment to European cooperation, Germany approved not only the European Monetary Union but also the (non-binding) Social Protocol appended to the Maastricht Treaty. This Protocol extended qualified majority voting to social issues, which rendered it easier for the EU to make social policy (Abels and Mushaben 2012). While the conservative U.K. government initially opted out of the 1992 Protocol, a subsequent Labour government did sign on in 1997. As a result, the EU began to transform itself from an entity that had focused primarily on economic relations to one with a far wider societal purview.

Detecting a new avenue through which it could advance LGBT rights, the International Lesbian, Gay, Bisexual, Trans and Intersex Association formed a branch organization, ILGA-Europe, in 1996, devoted to lobbying at the EU level (van der Vleuten 2014). Over the years, ILGA-Europe and other transnational organizations including Human Rights Watch and Amnesty International have built up a network of sympathetic policy elites, academic experts, judges, and European Parliamentarians. This network has been described as a "velvet triangle," based on its iron-triangle style of soft-law advocacy for feminist concerns and LGBT rights within the EU (Paternotte and Woodward, 2014; Paternotte and Kollman 2013). Relevant policy elites participating in the network include members of the Directorate General on Fundamental Rights and members of the European Parliament Intergroup on LGBT Rights (van der Vleuten 2014). More recently the triangle has added descriptive representatives, that is, openly LGBT elected officials and bureaucrats, speaking out on their own behalf (Reynolds 2013).

Consistent activist pressure at the European level ensured that LGBT rights became a cornerstone of EU social policy in the post-Cold War period (Ayoub and Paternotte, 2014, 13). Ratified in 1997, the Amsterdam Treaty (Article 13) empowered the EU to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.” Shortly thereafter, in 2000, member states adopted the Directive on Equal Treatment in Employment (Council Directive 2000/78/EC), obliging them to prohibit workplace discrimination on the basis of sex, sexual orientation, and (in 2002) gender identity. The EU Charter of Fundamental Rights, also drawn up in 2000, mandated equal treatment as well as the right to bodily integrity and the freedom to marry, *inter alia*, regardless of one’s sexual orientation. To demonstrate its support for LGBT rights, the EU began subsidizing ILGA, giving it the resources it needed to work full-time for the rights of sexual minorities. The Charter became legally binding under the 2009 Lisbon Treaty. Unification thus helped to transform the European Union into a source of supranational pressure vis-à-vis the German government, which became vulnerable to charges of violating LGBT citizens’ fundamental rights.

ILGA’s work has not been confined to the European Union, however. It also obtained consultative status at the United Nations (1993), the Council of Europe (1998), and in the UN’s Economic and Social Council (2006). It has continued its pre-unification struggle for rights via the Council of Europe and its European Court of Human Rights, especially via the LGBT Issues Unit and the Parliamentary Assembly (van der Vleuten 2014). The United Nation’s Committee on Human Rights has moreover become an important venue for their work (Symons and Altman 2015). As a result, since 1990 German activists have availed themselves of ever more “pincers” to challenge their country’s prestige at the international level.

### *Unification's Impact on the German LGBT Movement*

The other relevant development upon German unification in 1990 was the emergence of a united German LGBT political organization, called the *Lesben- und Schwulenverband in Deutschland* or LSVD. Since that time, activists allied with this group have effectively pressured the German government to live up to its international treaty commitments to respect the rights of lesbian, gay, and transgender citizens. As unification with West Germany became likely, East German working groups among gays and lesbians faced the prospect of more repressive laws governing homosexuality than they had experienced in the GDR. Liberated from Stasi infiltration, and enjoying new freedoms of speech and assembly, they created an expressly political organization, the *Schwulenverband der DDR* (SVD). It set to work in early 1990 lobbying East Germany's new, democratically elected Volkskammer to prevent Paragraph 175 from being extended eastward (LSVD 2015).<sup>6</sup> The SVD was successful in this regard and the Unification Treaty specified that no one in the new *Länder* could be convicted under this section of the penal code.

As soon as it became clear that unification was inevitable, the group changed its name to the *Schwulenverband Deutschlands*; by December 1990 it began including western German representatives (*Westbeauftragte*) among its ranks. One of the earliest to join was Manfred Bruns, a federal prosecutor by profession who had recently come out as a gay man. Volker Beck, an aspiring Green party politician from Cologne who had been a BVH member, also signed on. The eastern group quickly attracted westerners to its ranks because of BVH member differences over partnership rights. The SVD was clearly committed to pursuing marriage rights (likely due to its origins in the Church). Rather than continuing to their struggle over this issue in the BVH,

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<sup>6</sup> The descriptions of LSVD activities included below are drawn from this source.

Western marriage supporters simply broke away and joined the eastern organization (Kollman, 2014, 104). The SVD then expanded to also include lesbians, renaming itself the LSVD.<sup>7</sup> The BVH ultimately disbanded in 1997.

The merger of eastern and western gays and the inclusion of lesbians into a single political organization at the time of unification had a significant impact on German politics over the next twenty-five years. The LSVD has consistently provided one prong of the pincer squeezing reluctant government officials into action on LGBT issues. At its inception, the group began cultivating international contacts, becoming an ILGA member, ensuring that the two prongs “pinching” German governments have worked in tandem over the years. As documented below, this has also contributed to a considerable personnel overlap between the German LSVD and ILGA-Europe.

### **III. Putting the Pincer to Work: Post-Unification Policy Changes**

The first item on the LSVD’s post-1989 agenda was to remove Paragraph 175 from the Basic Law. To that end, the group lobbied the Bundestag and Bundesrat’s joint Constitutional Commission. The Bundestag committees on Women and on Legal Affairs held hearings on the issue in 1992 and 1993, respectively. For the first time in the history, according to the LSVD, openly LGBT people testified on behalf of lesbian and gay rights in the national parliament. Volker Beck and Manfred Bruns spoke in their capacities as LSVD representatives. In their case against Paragraph 175, Beck and Bruns likely referenced a 1993 ECtHR decision declaring Cypriot sodomy laws a violation of the European Convention on Human Rights, as well as that court’s two

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<sup>7</sup> Although this development occurred in 1999 I use the new acronym as of unification for ease of presentation.

decisions from the 1980s against British and Irish sodomy laws.<sup>8</sup> The combination of domestic activism and international pressure to make Germany live up to its role as a defender of human rights were ultimately successful: Paragraph 175 was repealed in 1994, while the age of consent for homosexual and heterosexual acts fell to 14.

When prohibitions against sodomy were finally lifted, the LSVD was able to turn its attention to other issues, including obtaining marriage rights, the elimination of employment and other forms of discrimination, anti-gay violence, assistance to AIDS patients, recognition and reparations for gay victims of the Holocaust, and erecting LGBT-themed public monuments. As time went on, their activities expanded to promote the rights of same-sex parents as well as those of transgender and intersex citizens. In all instances, activists pressured the German government at home and at the transnational level, collaborating with ever-expanding velvet triangles and filing multiple lawsuits in the European Court of Human Rights and the EU Court of Justice. Over the past twenty-five years these pincers have squeezed reluctant Christian Democratic and, at times, Social Democratic leaders to improve the legal status of LGBT citizens. The next section makes this case by closely examining marriage and partnership rights since 1990. The centerpiece of gay and lesbian political activity in the wake of unification, marriage encompasses a broad array of other rights across many social, economic and foreign policy domains. I also draw on the “shadow case” of transgender citizen seeking to to change their legal gender to demonstrate the applicability of my argument to other issues. Together these cases represent some of the most important goals of contemporary LGBT activists and illustrate the

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<sup>8</sup> The official committee report of this hearing (12/7035) does not include the speakers’ actual remarks; see Aichele-Froelich 2013 for the LSVD’s account.

breadth of the movement today. The 1990 creation of the LSVD and Germany's promotion of institutional reforms to the EU have indirectly and gradually had profound down-stream consequences for the rights of sexual minorities.

### Partnership Rights

From the start, the LSVD engaged in a two-pronged strategy in pursuit of marriage rights. At the domestic level, the LSVD sponsored an *Aktion Standesamt* in 1992, during which they sent 250 gay and lesbian couples to local registry offices across Germany to request marriage licenses. All couples were rejected, leading the LSVD, in turn, to pursue various court cases on behalf of almost one hundred couples, arguing their civil right to marry had been violated. One case ultimately made it to Germany's Constitutional Court (*Bundesverfassungsgericht*) which ruled (1 BvR 640/93) that while a lack of access to marriage per se did not comprise a violation of civil liberties, same-sex couples' lack of legal options to protect their relationships might, in certain instances, amount to violations of the Basic Law's equal treatment clause (Article 3). Because the lawsuits were not filed on the latter grounds, however, the Court said it could not make an official decision regarding marriage for same sex couples and Article 3.

Developments prior to unification had taught the LSVD that there were limits to pursuing marriage rights solely through domestic channels. In addition to attempting to repeal Paragraph 175 prior to unification, the Greens had also pressed the CDU Bundestag majority to establish legal arrangements akin to domestic partnerships for heterosexuals who did not want to marry, as well as for lesbian and gay couples who could not marry. The CDU/CDU government had quickly dismissed Jutta Oesterle-Schwerins's proposals, however, on the grounds that they would violate Article 6 of the Basic Law that required "special protections" for marriage and family



(11/54, 3759).<sup>9</sup> Faced with roadblocks at the domestic level, the LSVD's Green party ally turned to the European level, in the hopes that the EU's increased power to regulate social issues could be used to override domestic opposition to marriage equality. Claudia Roth a Green Member of the European Parliament (EP), and member of the EP committee on Civil Liberties, authored the so-called Roth Report on the status of gay and lesbian citizens in the European Union in 1993 (Kollman, 2014, 102). It documented various forms of discrimination, ultimately leading the EP as a whole to issue a resolution on "Equal rights for homosexuals and lesbians in the European Community" in February 1994. The resolution called on member states to offer, among other things, same-sex couples marriage or marriage-like forms of legal protections (European Parliament 2012).

Within a year of the Constitutional Court verdict, and three months after the EP resolution, the Greens submitted a new bill to the Bundestag (12/7885), this time calling for the right for same sex couples to marry. In the Justification (*Begründung*) section, the Greens referenced both the EP resolution and the Constitutional Court ruling, listing examples of the unequal treatment accorded same-sex couples and married couples under the law, for example, regarding asylum rights, tax regulations, and pensions. The Greens warned: "lawmakers should not wait until they are forced by Karlsruhe [the Constitutional Court] to reform marriage laws." The CDU/FDP government never allowed the bill onto the floor, however.

Undeterred, the LSVD and Greens kept up their pincer-like, pro-marriage strategy. In an effort to increase German public awareness of problems faced by gay and lesbian couples, the

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<sup>9</sup> All references made here to bills, committee hearings, and Bundestag plenary debates use the Bundestag's classification numbers and where relevant the page number; these documents are available at [www.parlamentsspiegel.de](http://www.parlamentsspiegel.de).

LSVD began a “*Traut Euch*” campaign for marriage rights in 1996, placing activists outside of registry offices to collect signatures in favor of same-sex partnership rights from sympathetic heterosexual couples. The LSVD also pursued court cases in which same-sex couples could demonstrate they were treated differently than married heterosexual couples. One such case, *Roosli vs. Germany*, involving a loss of tenancy rights for a man whose male partner had died, failed in 1993 at both the national level and in the European Court of Human Rights. The Greens nonetheless submitted a further bill to give same-sex couples marriage rights (13/2728), along with a proposal for domestic partnerships (13/7228). This time the marriage bill was actually sent to a committee and debated. Again, the main justifications centered on the EU Resolution and the Constitutional Court ruling; added to this were references to developments in the Nordic countries allowing legalized same-sex partnerships and portraying Germany as a laggard in extending LGBT rights. Manfred Bruns and Maria Sabine Augstein, a transgender lawyer from Munich who had become active in the LSVD, testified in favor of the law during committee hearings (13/10795). Despite their appeals, both the committee and the Bundestag majority rejected the Green proposal, with the votes of the CDU, SPD, and FDP.

The watershed election of 1998, resulting in a SPD-Green coalition that promised to legalize same-sex relationships, made it somewhat easier for the LSVD to pressure the government. Once the coalition was in place, however the marriage issue did not occupy the forefront of the government’s agenda. The SPD did not act on the issue because the party itself was divided on the constitutionality of allowing gays and lesbians to marry (Davidson-Schmich 2006). Some, such as Chancellor Gerhard Schroeder, did not believe it would violate the Basic Law; others, including Justice Minister Herta Däubler-Gmelin and Interior Minister Otto Schily, feared that the Constitutional

Court would rule that “gay marriage” violated Article 6’s “special protection” of marriage and family. In spite of Social Democratic reluctance, the LSVD’s domestic and European-level efforts soon pushed the party into action.

In 1999, the European Court of Human Rights ruled in a case sponsored by ILGA (Lustig-Prean and Beckett v. United Kingdom) that denying gay men military careers constituted a violation of fundamental rights. Ratification of the Charter of Fundamental Rights meant that the German government’s international prestige would be on the line if it failed to protect gays’ and lesbians’ rights as it had promised. The 2000 Equal Treatment Directive on employment made bans on gay soldiers violations of EU regulations as well, meaning that activists could now also file cases in the European Court of Justice (ECJ) (van der Vleuten 2014).

Back home, the LSVD started a campaign to remind members of the Red-Green Coalition of their promise to move forward on same-sex partnerships and their obligation to do so, given European developments. The group staged demonstrations in front of the Bundestag and the SPD Chancellor’s office. In addition, LSVD activists protested outside SPD Defense Minister Rudolph Sharping’s ministry, urging him to end the Bundeswehr’s policy prohibiting homosexuals from becoming officers.<sup>10</sup> The chances of same-sex couples winning lawsuits charging unequal treatment and discrimination because of their inability to marry seemed increasingly good; the LSVD and ILGA continued filing such cases in Germany and across Europe (Kollman 2014; Helfer and Voeten 2014).

### *The Life Partnership Law*

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<sup>10</sup> This ultimately occurred in 2001.

Against this backdrop of LSVD pressure at home and the ECJ mandates at the EU-level, the Social Democrats finally relented; in the summer of 2000 they, along with the Greens, submitted a Bundestag bill for Registered Life Partnerships (the *Lebenspartnerschaftsgesetz*, 14/3751). As with previous Green drafts, this bill offered the European Parliament Resolution of 1994 as a main justification for action; it also pointed to the expanding number of same-sex domestic partnership laws adopted in other member states. In Bundestag debates speakers explicitly mentioned the EU as an impetus for the Life Partnership Law (Davidson-Schmich, 2006, 159).

In order not to conflict with Article 6 of the Basic Law, the Red-Green bill did not give same-sex partners rights identical to those married partners. Although their unions would be legally-recognized, gay and lesbian couples would still enjoy fewer rights than spouses. The exceptions can be divided into two different categories: family rights and property rights. On the family front, registered life partners were not given the right to adopt children, nor did they secure guaranteed access to assisted reproductive services. For same-sex couples who found themselves jointly raising children – for example, a biological child conceived by one partner in a previous relationship, or a child who had been adopted by a single parent – the “social” (non-biological / non-adoptive) parent remained a legal stranger to the child, eligible only for limited guardianship rights. Social parents could not claim welfare benefits or tax advantages for their children (Rupp 2009). On the property rights front, same-sex partners possessed neither all the rights nor all of the responsibilities associated with marriage, especially with regard to taxes and employment benefits: although they paid more taxes, they were entitled to fewer employment benefits.

The law passed with the support of the governing SPD and Greens. On the other side, the CDU/CSU not only voted against it; some CDU-governed *Länder* also took the law to the Constitutional

Court on the grounds that it violated Article 6 BL. When the justices heard the case in April 2002, they invited LSVD lawyer Manfred Bruns to testify; he argued that Life Partnerships were constitutional because they took no rights away from heterosexual couples. In their July 2002 ruling, the Court echoed Bruns' reasoning, upholding the Life Partnership law. It has been in effect ever since, but this and other related laws have been amended multiple times to bring Life Partnerships closer to marriage. I now focus on the amendment process, demonstrating the ways in which LGBT activists managed to employ pincer tactics to force these gradual revisions on reluctant German leaders.

After the passage of the Life Partnership Law, the LSVD's good working relationship with ILGA-Europe became even closer; LSVD board member Phillip Braun joined ILGA-Europe's Executive Board in 2002 (ILGA 2004). Braun went on to become one of ILGA's two General Secretaries in 2006; in that capacity he addressed the United Nation's Human Rights Council, illustrating the tight personnel links between the domestic and international prongs of the pincer.

#### *The Revised Life Partnership Law*

For the LSVD, Germany's Life Partnership Law represented a mixed victory. On the one hand, same-sex couples were finally granted legal protections; on the other hand, large gaps between married couples and life partners remained. Almost immediately the organization began to work at home and at the EU level to close the gap. A large part of their strategy consisted of ongoing efforts to solicit lawsuits from same-sex couples whose Life Partnerships did not grant them the same rights as married couples. One earlier case had proven successful: in October 2003 a Düsseldorf court ruled that a surviving life partner should be allowed to receive social

security for surviving spouses (*Hinterbliebenenrente*), a benefit from which Life Partners had been excluded (Rath 2004).

The 2003 decision, combined with the Constitutional Court ruling declaring the Life Partnership Law valid, removed some major SPD legal concerns about equating life partnerships and marriage. In 2005 the SPD-Green government adopted the Revision to the Life Partnership Law (*Gesetz zur Überarbeitung des LPartG*). The Revision complied with the constitutional court ruling, extending the right to social security benefits for surviving life partners. It also included progress in terms of family rights: a life partner could now adopt his or her partner's biological offspring but not a separately adopted child.<sup>11</sup> During the Bundestag debate SPD Justice Minister Brigitte Zypries justified the new law by arguing "If we don't handle these points then they will be decided elsewhere. Not only the German courts but also the European courts nowadays place great value in discrimination-free regulations" (15/ 119, 10912-3).

The SPD was reluctant to extend full adoption rights under the revised law, e.g., by allowing a partner's previously-adopted child to be subsequently adopted by a life partner. Nor could life partners jointly adopt children themselves, because these practices appeared to violate the Council of Europe's 1967 European Convention on Adoption; the latter only sanctioned adoptions by married couples, not life partners; it also banned "chain adoptions," i.e., those undertaken by unmarried people adopting the same child by way of separate, consecutive procedures. Testifying before the Bundestag's Legal Committee in 2004 on behalf of the LSVD,

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<sup>11</sup> Despite these advances, the revised law failed to extend all of the benefits married couples enjoyed, including equal inheritance rights, equal spousal employment benefits for civil servants, and access to the marriage tax bonus (*Ehegattensplittung*). It also ignored other types of adoption and aspects of family formation such as artificial insemination.

Manfred Bruns, argued that the spirit of European Convention would not be broken by allowing Life Partners to adopt; he claimed that the 1967 law did not specify life partners as valid parents simply because legalized same-sex life partnerships had not existed at the time. He urged the Bundestag to grant life partners full adoption rights, pointing to Sweden (which withdrew from the Convention once it allowed same-sex couples to adopt) and Denmark (which claimed it would refuse to enforce the Convention if called upon to do so). The SPD/Green government refused to follow Bruns' advice, however. During the debate on the omission of full adoption rights from the revised bill, the CDU/CSU referred to the lack of external pressure as a reason for not extending further rights to LGBT citizens, arguing "There is no [European] right to adoption by the way" (15/119, 10914).

The SPD/Green coalition lost the elections shortly after these revisions were undertaken. Subsequently the Christian Democrats entered a Grand Coalition with the Social Democrats from 2005 to 2009, followed by a coalition with the Free Democrats from 2009 to 2013. The CDU/CSU forged a Grand Coalition government with the SPD again in 2013. Ongoing Christian Democratic opposition to LGBT issues means that extensive domestic and international pressure has been required to obtain even minimal changes to German policy. Rather than focusing on lobbying elected officials, LGBT activists have instead pursued court cases both at home and at the European level.<sup>12</sup> The LSVD's initial efforts to "pinch" the CDU prioritized concerns regarding property rights; it turned to family rights later on.

#### *Amendments Extending Property Rights*

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<sup>12</sup> All major German political parties have intraparty organizations (or affiliated groups) for LGBT party members and these bodies have undertaken extensive activities to convince their parties to adopt LGBT-friendly platforms. For more on these efforts and their results see Davidson-Schmich (forthcoming).

Given the successful efforts to defend the Life Partnership Law's constitutionality and to secure pension benefits for same-sex partners, the LSVD continued soliciting cases of disadvantaged same-sex couples. Allied lawyers, including Augstein and Berlin lawyer Dirk Sigfried, were especially interested in taxation rules and civil service employment because these cases could be tied to the EU's Equal Treatment Directive (Rath 2004; van der Vleuten 2014). One LSVD case filed in the state of Bavaria, *Tadao Maruko v. Versorgungswerk der deutschen Bühnen*, was referred to the ECJ for a preliminary ruling. It centered on a man who had not been granted his deceased male partner's civil service pension; because the couple had been prohibited from marrying, the surviving partner had been rendered ineligible for spousal benefits. Bruns argued part of the case, and ILGA-Europe also testified (ILGA 2007). The Court of Justice ultimately ruled that under the Equal Treatment Directive, married couples and life partners had to receive the same spousal benefits found in employment contracts. Two years later, the ECJ heard a second case (*Römer v. Hamburg*) regarding Hamburg's allocation of higher pensions to married couples than to life partners; again, the ECJ found against a German state government. The plaintiff was represented by Helmut Graupner, an Austrian lawyer and legal advisor to ILGA-Europe; Bruns and the LSVD provided additional counsel (Graupner, n.d.; LSVD 2015).

These European level developments supplied the LSVD with additional ammunition for use in domestic courts. The group also benefited from Germany's belated adoption of an EU mandated anti-discrimination law (the *Allgemeines Gleichbehandlungsgesetz* or AGG) in 2006; it called for equal treatment of all citizens regardless of sexual orientation and created a Federal Anti-Discrimination Office. The AGG was also a result of pincer activism which forced a reluctant CDU/CSU to implement EU Framework Directive 2000/78/EC (see von Wahl 2011). The LSVD, in



turn, successfully pressured Germany into extending greater property rights to Registered Life Partners.

Between 2005 and 2009, eight cases relating to the Life Partnership Law and property rights made their way to the Constitutional Court.<sup>13</sup> Refusing to hear three of the cases, the high court decided all of the others in favor of the LSVD plaintiffs by 2013. It mandated that Life Partners and married couples receive the same family allowances from their employers, identical spousal pensions, and equal access to the marriage tax bonus (*Ehegattensplittung*). As a result, federal and state lawmakers were forced to amend a number of the laws governing taxes and civil service pay (*Beamtenbesoldung*). In justifying a 2006 reform bringing life partnerships closer to marriage, the CDU's speaker for family law, Ute Granold, conceded in the Bundestag, "These adjustments apply to tax, inheritance, and civil service laws. There are corresponding court decisions which call upon us to make these changes" (16/17, 1235). The most recent reform (18/5907) consisted of a twenty-eight page catalog inserting the word "or life partner" after the word "spouse" in the text of multiple laws; European and Constitutional court decisions were included in its "Justification" section as the reasons for the bill. In the "Alternatives" portion of the legislation the CDU government wrote, simply, "none."

### *The Struggle for Family Rights*

The LSVD's struggle to achieve family formation rights proceeded more slowly. Granold observed during her remarks to the Bundestag that while "we are open to conversation and compromises in the question of tax laws, we are not in regard to adoption. ... as you know, at the

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<sup>13</sup> These cases included 1BvR155/05, 2BvR855/06, 2BvR1830/06, 2BvR909/06, 1981/06, 288/07, 1BvR1164/07, 1BvR611/07, 2464/07, and 2BvR1397/09; subsequent court decisions will also be cited using the Constitutional Court's abbreviations. Details about all cases cited here can be found at [www.bundesverfassungsgericht.de](http://www.bundesverfassungsgericht.de).

European level there is an agreement that stipulates that only married couples are allowed to adopt” (16/17, 1236). To secure the right to adoption, the LSVD and its allies in ILGA-Europe thus needed to change the Convention on Adoption promulgated by the Council of Europe. ILGA testified in favor of Convention reforms before the CoE’s Committee of Experts on Family Law (Hodson 2010). The testimony was convincing: a revised European Convention on the Adoption of Children took effect in 2008 (Council of Europe 2008). It allowed same-sex partners to adopt children if they were married or in registered life partnerships. After six years of foot-dragging, with its prestige as a defender of human rights on the line, the CDU/CSU-SPD government finally ratified the Convention revisions in 2014.

This European decision, along with a 2009 Constitutional Court verdict, gave new impetus to the LSVD’s domestic efforts to achieve family rights. In 2009 the Court issued a ruling on how the Life Partnership Law should be interpreted (*Grundsatzentscheidung zum Lebenspartnerschaftsrecht*); it argued that the Basic Law *requires* life partners and heterosexual spouses in “comparative situations” to be treated equally. Thus the Court moved beyond seeing life partnerships merely as not taking away from the special legal protections of marriage and family; instead it claimed that they were worthy of similar protections. This view drew heavily on developments in international human rights law, which themselves were prompted by groups such as the LSVD and ILGA-Europe. In 2006 international legal experts, including ILGA-Europe’s Robert Wintemute (ILGA n.d.), had drafted the “Yogyakarta Principles” at a meeting in an Indonesian city of the same name. These principles are elaborated in 29 sections. Section 24, The Right to Found a Family, outlines the ways in which LGBT rights, including marriage and adoption rights, are already protected under existing human rights law. This reasoning, in turn,

led the German Constitutional Court to stress the need for children's legal security children in families with same-sex parents in its 2009 *Grundsatzentscheidung*.

In response, the LSVD began expanding the scope of its lawsuits to include family-related issues. Since 2009, four LSVD-sponsored cases regarding family rights have reached the Constitutional Court (1BvL15/09, 1BvR666/10, 1BvL1/11, 3247/09, 1BvL02/13, 03/13). Two cases involved "successive adoptions" in which a same-sex partner sought to adopt a child whom her partner had previously adopted. While the first case was not heard, the Constitutional Court found in the second that not allowing life partners to pursue such adoptions when heterosexual couples easily could amounted to discrimination. As a result, the CDU was forced to permit successive adoptions in 2014, but it refused to extend rights to same-sex couples who wished to jointly adopt orphans or children they were fostering together (the subject of the other lawsuit).<sup>14</sup> As had been the case when the CDU/CSU approved laws regarding the extension of property rights to LGBT citizens, the "Alternatives" section of the bill on successive adoptions read "none" (18/1285).

It is likely that future lawsuits to grant equal rights to "rainbow families" (those headed by same-sex parents) will be filed at the national and European levels and that they will succeed. Over the past decade, LGBT parents have mobilized at both levels to press for their policy preferences. In 2000 a group called ILSE (*Initiativ lesbisch und schwuler Eltern*) formed within the LSVD; by 2009 they were collaborating with other similar groups across Europe. In 2012, the LSVD and ILSE helped to form the Network of European LGBT Family Associations

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<sup>14</sup> The Constitutional Court refused to hear the most recent foster parent adoption case on a technicality and encouraged those filing the case to re-file it on different grounds, suggesting that in the future they would approve a properly-framed request to allow life partners to jointly adopt foster children.

(NEFLA n.d.). As of 2016, its Vice President was Lisa Green from the LSVD; like ILGA-Europe, this organization's main purpose is to work through the EU and member states to achieve equal rights, in this case for rainbow families.

LGBT activism has extended beyond Europe to the United Nations level. In 2011 the UN Human Rights Council issued a Declaration in favor of LGBT rights, including the right to marry; it framed these rights as issues already incorporated into other international agreements involving human rights. Members of ILGA, including LSVD executive board member Phillip Braun, were instrumental in making the case to the UN committee. The UN endorsement has led national governments, international organizations, and activists across Europe to associate gay and lesbian rights to marriage and benefits with democracy ( Ayoub and Paternotte 2014; Symons and Altman 2015). Given Germany's special sensitivity to protecting individual human rights, these developments have strengthened the international "prong" of the pincers squeezing its national leaders.

In contrast to conditions as of unification, the LSVD's demand for marriage and adoption rights has come to be widely accepted by all major German parties except for the CDU/CSU, although individual CDU members have expressed their support ("Mitgliederbefragung" 2015). To promote this goal, opposition parties have submitted multiple bills to the Bundestag focusing on adoption rights for Life Partners; draft laws include the new Convention on Adoption in their own Justification sections.<sup>15</sup> All such proposals have either been ignored or rejected by Christian Democratic-led governments, however. In 2015, SPD, Green, and Left party governed states

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<sup>15</sup> The Green party's draft laws include 16/3423, 16/5596, and 18/577 (see also 18/842), the Left Party's motions are 16/5184 and 17/2023, and the FDP's bills – submitted only when they were in the opposition – consist of 16/565 and 6/8875.

campaigned to convince the Bundesrat to pressure the Bundestag to “end all unconstitutional discrimination against registered life partners” (“Rot-Grüne” 2015). If the CDU/CSU were to be removed from power, German same-sex couples would likely attain the right to marry and the right to adopt.

In short, key developments since unification i.e., the creation of a pan-German LGBT political organization committed to pressuring the government for marriage rights, combined with EU institutional reforms expanding the social policy remit – have tightened the “squeeze” on the federal government to extend marriage rights to lesbian and gay citizens. A similar pattern in terms of transgender concerns can be observed.

### Transgender Rights

Transgender individuals are those whose gender identity does not match their physical sex. Magnus Hirschfeld coined the term “transvestite” in the 1800s and urged imperial police to turn a blind eye to this practice. West Germany did pass a Transsexual Law (*Transsexuellen Gesetz* or TSG) in 1980, but it was not until well after unification that trans\* people began to mobilize systematically to demand political recognition. The organization dgti (*Deutsche Gesellschaft für Transidentität und Intersexualität e.V.*) was founded in 1998 (dgti 2016). The chronicle of LSVD activities first mentions transgender issues in 2002; it is thus not possible to talk about eastern and western German transsexual groups prior to unification. Instead, trans\* activism emerged after unification allowed for the model of a pan-German LSVD at home and after the Amsterdam Treaty was ratified at the EU level. A supranational umbrella organization, Transgender Europe, was organized in 2005; it first received the funding needed to create a professional NGO in 2009 (TGEU 2016).

Transgender activists began to organize in Germany due to several concerns they shared about the TSG, which regulated how citizens could obtain official documents reflecting their preferred gender. One possibility, the so-called “small solution,” allowed trans people to simply change their *names* on their identity cards. The second option, referred to as the “large solution,” permitted people to change their *legal sex* on identity documents. To do that, however, the Transsexual Law SG specified that a person had to a) have surgery to be rendered infertile; and b) could not be married.<sup>16</sup> This meant that to legally change one’s sex, a person would have to undergo unnecessary surgery, although it is possible to live as a person of the opposite sex without physical amputations and sterilizations; and, if married, she or he would need to divorce a spouse, regardless of any emotional desire to do so.

Just as lesbian and gay activists before them had done, European trans\* activists sought changes in domestic policy by using the European Court of Human Rights (Helfer and Voeten 2014). As with the repeal of sodomy laws, the first legal victory for trans\* activists came through the ECtHR based on a suit filed by British activists (*Goodwin vs. United Kingdom*). The case involved a male-to-female transsexual who complained that she had not been allowed to alter her sex on key identity documents; as a result, she was unable to marry a man because her birth certificate specified she, too, was male (the case was filed before gays were allowed to marry in the UK). In 2002, the court found in her favor, agreeing that Articles 8 and 12 of the European Convention on Human Rights (Right to Private Life and the Right to Marry), had been violated. The 2006 Yogyakarta Principles subsequently linked existing human rights law to trans\* activists’ demands that individuals be allowed to change their legal names and sex,

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<sup>16</sup> For details of the law see 1 BvR 3295/07.

without obtaining surgeries, divorce, and/or certificates of mental illness as prerequisites for these rights.

International developments, in turn, inspired German activists to file domestic court cases to pressure the first Merkel government to change the Transsexual Law. One lawsuit involved an individual, defined as male at birth, who had married a woman in 1952 (1BVL 10/05). After decades of marriage he came out as transsexual. She supported his intention to live his life as a woman; however, in order to change his identity documents, German law required him to divorce his wife. He was unwilling to do so, given the support she had provided over the past fifty years. Like the European Court of Human Rights before it, the Constitutional Court, ruled in 2008 in favor of the plaintiff, citing German rights equivalent to those noted by the ECtHR, i.e., Article 2.1 and Article 6.1 of the Basic Law. The court moreover mandated that the Bundestag remove the marriage requirement from the TSG's "large solution" by August 2009.

In late June 2009 the Bundestag amended the TSG, removing the marriage clause. All parties but the Christian Democrats likewise favored deletion of the surgery requirement (or updating the law altogether). Left-wing parties vowed to do so in the event that they won the upcoming election (16/228). The Free Democrats spoke for most parties, lamenting that, "the draft law we now have limits itself to regulating a tiny detail in order to comply with the Constitutional Court's requirement of a change by August" (16/228, 25551). Indeed, in the "Alternatives" section of the bill, the CDU/SPD noted there were none, as had been the case regarding the addition of same-sex partnership rights (16/131, 57). The law passed with the support of all parties but the Greens, who abstained because the revised law still required

surgery prior to changing one's legal sex. The opposition's hope of an election victory did not materialize and the CDU/CSU remained in power.

This development made it unlikely that the new coalition would remove the surgery requirement without pressure from the Constitutional Court, so trans\* activists continued to pursue action through the courts, framing the TSG's surgical requirements as a human rights violation as other European activists had done. In January 2011, the year the UN Human Rights Council declared support for the Yogyakarta Principles, the Constitutional Court heard a further TSG case. This suit involved a male-to-female transsexual cohabiting with another woman; the couple applied for a registered life partnership but had been turned down because the trans\* partner was still listed as male on her identity documents, rendering the couple ineligible. Already 62 years old, the plaintiff petitioned the Court to waive the sterilization requirement for an identity card change, given her advanced age and the health risks this unwanted / unnecessary surgery represented. This time surgical requirements were deemed unconstitutional (1 BvR 3295/07), based not only on Articles 2 and 6 as applied to the earlier TSG case, but also on the human right to bodily integrity under Article 2.2 BL. The court did not specify a date for amending the TSG; it simply declared that a surgical requirement could no longer be enforced.

Achieved through a combination of international court decisions and domestic activism, these legal revisions have made Germany a leader in trans\* rights. In 2012 Transgender Europe even moved its headquarters to Berlin; it now receives funding from the EU as well as from the Green Heinrich Böll Foundation (TGEU 2016). Its Executive Director, Julia Ehrt, is German. Since hiring its first permanent staff in 2009, the organization has built links to velvet-triangle



members, conducting dialogues with the European Parliament's Intergroup. It still files cases in the European Court of Human Rights. In its May 2015 decision, [\*Identoba and Others v. Georgia\*](#), the ECtHR ruled that gender identity is a protected category under Article 14 of the Human Rights Convention. It is likely that these judgements, combined with dgti/LSVD activism, will lead to a further extension of transgender rights in the coming years

## **Conclusion**

Lesbian, gay and transgender citizens have acquired many legal protections since unification. Much of the credit can be attributed to pan-German activist groups like the LSVD, ILSE and the dgti, all of which emerged in the wake of unification. They have pressured successive governments to extend rights to sexual minorities, able to do so, in part, because of an expanded EU social policy remit evolving out of the Maastricht Treaty. Because Germany sought to bind itself more closely to Europe at that time, its leaders have increasingly found themselves squeezed into implementing policies advanced by European-level LGBT activists. The situation is unlikely to change any time soon, which means that future improvements to the legal status of sexual minorities in the Federal Republic are likely to be forthcoming.

This case illustrates that the post-communist transformation process in Germany has had implications not only for high politics, the economy, and foreign policy, but also for social policies such as those regarding the rights of sexual minorities. The impact of unification in this regard was indirect and gradual, and occurred both from the "outside in" (via the EU prong of the pincer) and from the "inside out" (via the work of the LSVD, dgti, and other activists).

## References

- Abels, Gabriele and Joyce M. Mushaben, Eds.. 2012. *Gendering the European Union*. London: Palgrave Macmillan.
- Adam, Barry D. 1995. *The Rise of a Gay and Lesbian Movement*, Boston: Twayne Publishers.
- Aichele-Froelich, Brigitte. 2013. "P175 StGB: Ein Resumee von Gunter Dowrek." LSVD Website. Available at <http://ba-wue.lsvd.de/2013/02/15/%C2%A7-175-stgb-ein-resumee-von-gunter-dowrek-2/>. Accessed February 2016.
- Anderson, Jeffrey. 1999. *German Unification and the Unification of Europe*. New York: Cambridge: Cambridge University Press.
- Ayoub, Phillip M. 2013. "Cooperative Transnationalism in Contemporary Europe: Europeanization and Political Opportunities for LGBT Mobilization in the European Union" *European Political Science Review* Vol. 5, Issue 2 (July): 279 – 310.
- Ayoub, Phillip. 2016. *When States Come Out: Europe's Sexual Minorities and the Politics of Visibility*. Cambridge University Press.
- Ayoub, Phillip M. and David Paternotte. 2014. *LGBT Activism and the Making of Europe: A Rainbow Europe?* London: Palgrave Macmillan.
- Baumann, Jürgen. 1968. *Paragraph 175*. Darmstadt: Luchterhand.
- Council of Europe. 2008. "Explanatory Report to the European Convention on the Adoption of Children (Revised)." Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3833> . Accessed February 2016.
- Davidson-Schmich, Louise K. 2006. *Becoming Party Politicians: Eastern German State Legislators in the Decade Following Unification*. Notre Dame, IN: University of Notre Dame Press.
- Davidson-Schmich, Louise K. Forthcoming. „Amending Germany’s Life Partnership Law: Emerging Attention to Lesbians’ Concerns“ in Louise K. Davidson-Schmich. Ed. *Gender, Intersections and Institutions: Intersectional Groups Building Alliances and Gaining Voice in Germany*. Ann Arbor, MI: University of Michigan Press, forthcoming.
- dgti. 2016. "Warum wir Deutsche Gesellschaft für Transidentität und Intersexualität e.V. heißen und warum wir uns kleingeschrieben abkürzen" Available at [www.dgti.org](http://www.dgti.org). Accessed February 2016.
- European Parliament. 2012. "Towards an EU roadmap for equality on grounds of sexual orientation and gender identity." Available at <http://www.lgbt-ep.eu/wp-content/uploads/2012/10/European-Parliament-Study-PE462.482-Towards-an-EU-roadmap-for-equality-on-grounds-of-sexual-orientation-and-gender-identity.pdf>. Accessed February 2016.
- Graupner, Helmut. N.d. „Professional Activities.“ Available here: <http://www.graupner.at/en/attorney-at-law-helmut-graupner-the-person>. Accessed February 2016.
- Helfer, Laurence R., and Erik Voeten. 2014. "International courts as agents of legal change: evidence from LGBT rights in Europe." *International Organization* 68, no. 01 (2014): 77-110.
- Hodson, Loveday. 2010. „ILGA-Europe’s Response to Professor Nigel Lowe’s Report to the Committee of Experts on Family Law.“ Available at: [34](http://www.coe.int/t/dghl/standardsetting/family/ILGA-</a></p></div><div data-bbox=)

- Europe%20Response%20to%20Professor%20Nigel%20Lowe's%20Report%20FINAL%20VERSION.pdf. Accessed February 2016.
- Hoffschildt, Rainer. 2002. „140.000 Verurteilungen nach § 175“. In: Fachverband Homosexualität und Geschichte e. V. (Hrsg.): *Invertito – 4. Jg. – Denunziert, verfolgt, ermordet: Homosexuelle Männer und Frauen in der NS-Zeit*. Hamburg: MännerschwarmSkript Verlag, pp. 140–149.
- ILGA. No date. „Interventions by ILGA-Europe and Partners“ Available at [http://old.ilga-europe.org/home/how\\_we\\_work/litigation/ecthr\\_litigation/interventions](http://old.ilga-europe.org/home/how_we_work/litigation/ecthr_litigation/interventions). Accessed February 2016.
- ILGA. 2004. „ILGA Team in Geneva.“ Available here: [http://old.ilga.org/news\\_results.asp?LanguageID=1&FileCategory=44&FileID=140](http://old.ilga.org/news_results.asp?LanguageID=1&FileCategory=44&FileID=140). Accessed February 2016.
- ILGA. 2007. „Opinion of Advocate General of European Court of Justice is favourable towards same-sex partners“. 6 September. Available here: <http://www.ilga-europe.org/resources/news/latest-news/opinion-advocate-general-european-court-justice-favourable-towards-same> . Accessed February 2016.
- ILGA. 2013. „ILGA 1978 – 2007.“ Available here: <http://ilga.org/about-us/1978-2007-a-chronology/>. Accessed February 2016.
- Kollman, Kelly. 2014. “Deploying Europe: The Creation of Discursive Imperatives for Same-Sex Unions” in Phillip M. Ayoub and David Paternotte Eds. *LGBT Activism and the Making of Europe: A Rainbow Europe?*, Basingstoke, UK: Palgrave Macmillan.
- LSVD. 2015. “25 Jahre LSVD – Chronik der Ereignisse” Available at <http://www.lsvd.de/verband/lsvd-chronik.html>. Accessed February 2016.
- “Mitgliederbefragung zur ‘Ehe fuer Alle’ spaltet Berliner CDU.” 2015. *Berliner Zeitung*. 1 July. Available here: <http://www.berliner-zeitung.de/berlin/homo-ehe-mitgliederbefragung-zur--ehe-fuer-alle--spaltet-berliner-cdu-,10809148,31087798.html> . Accessed February 2016.
- NEFLA.No Date. “Who we Are.” Available at <http://nelfa.org/who-we-are/> . Accessed February 2016.
- Paternotte, David and Kelly Kollman. 2013. “Regulating Intimate Relationships in the European Polity: Same-Sex Unions and Policy Convergence” *Social Politics* 20 (4): 510 – 533.
- Paternotte, David and Alison Woodward. 2014. “Travelling Concepts: The Velvet Triangle in Motion” Unpublished conference paper, cited in van der Vleuten 2014.
- Rath, Christian. 2004. “Wo kein Gesetz, da ein Richter: Homopaare verlegen sich für die Gleichstellung auf Musterprozesse” *taz*. 1. July, page 3.
- Reynolds, Andrew. 2013. “Representation and Rights: The Impact of LGBT Legislators in Comparative Perspective.” *American Political Science Review*. Vol. 107, Issue 2 (May): 259 – 274.
- “Rot-Grüne Bundesländer für Homo-Ehe.” 2015. *Frankfurter Allgemeine Zeitung*. 2 June. Available at: <http://www.faz.net/aktuell/politik/bundeslaender-mit-rot-gruen-koalition-wollen-homo-ehe-13625827.html> . Accessed February 2016.
- Rupp, Marina (Ed.). 2009. *Die Lebenssituation von Kindern in gleichgeschlechtlichen Lebenspartnerschaften*. Cologne, Germany: Bundesanzeiger Verlag.

- Sweet, Denis M. 1995. "The Church, the Stasi, and Socialist Integration: Three Stages of Lesbian and Gay Emancipation in the former German Democratic Republic" in *Gay Men and the Sexual History of the Political Left* Edited by Gert Hekma, Harry Oosterhuis and James Steakley. New York: The Haworth Press.
- Symons, Jonathan and Dennis Altman. 2015. "International Norm Polarization: Sexuality as a Subject of Human Rights Protection" *International Theory*. Vol. 7, Issue 1 (March): 61 – 95.
- TGEU. 2015. "TGEU tells EU to take trans issues to heart." 24 June. Available <http://tgeu.org/tgeu-tells-eu-to-take-trans-issues-to-heart/>. Accessed February 2016.
- TGEU. 2016. "About Us." Available at <http://tgeu.org/about/>. Accessed February 2016.
- van der Vleuten, Anna. 2005. "Pincers and Prestige: Explaining the Implementation of EU Gender Equality Legislation" *Comparative European Politics*. Vol. 3: 464 – 488.
- van der Vleuten, Anna. 2014. "Transnational LGBT Activism and the European Courts: Constructing the Idea of Europe" in Phillip M. Ayoub and David Paternotte, eds. *LGBT Activism and the Making of Europe: A Rainbow Europe?* London: Palgrave Macmillan: 119 – 144.
- von Wahl, Angelika. 2011. "A 'Women's Revolution from Above': Female Leadership, Intersectionality, and Public Policy Under the Merkel Government" *German Politics*, Vol. 20, No. 3: 392- 409.